

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

RYAN HYSELL and CRYSTAL HYSELL, on  
behalf of their daughter, A.H., a minor,

Plaintiffs,

vs.

RALEIGH GENERAL HOSPITAL, *et al.*,

Defendants.

Case No. 5:18-cv-01375

Judge: Frank W. Volk

**JOINT NOTICE REGARDING COLLATERAL SOURCE & REMITTUR**

*COME NOW*, all parties jointly by and through undersigned counsel, and respectfully submit this Notice Regarding Collateral Source & Remittitur as ordered by this Honorable Court. In support, the parties state the following:

1. This is a medical malpractice action that was tried to jury verdict in Plaintiffs' favor on June 2, 2021.

2. On March 31, 2022, this Honorable Court ordered that this matter be **"STAYED** and **RETIRED** to the inactive docket pending (1) the parties' consideration, no later than April 20, 2022, of amicably resolving the collateral sources issue, and (2) the Plaintiffs' acceptance of the Court's reduction of the jury award, with an appropriate proposed amendment(s) of the Judgment." Judgment Order [Doc 336].

3. In accordance with this Court's Order, counsel for the parties have discussed by telephone and email whether there is the possibility of an amicable resolution of this matter.

4. Subject to the appropriate approval by the United States of America, the parties anticipate engaging the services of Stephen Dalesio, Esq. to serve as a neutral / mediator in an attempt to resolve the collateral source issue and bring this matter to final resolution.

5. The parties propose the following schedule:

a. Over the next 7 business days the parties will independently discuss this matter and the issues with Mr. Dalesio.

b. After those independent meetings and upon the advice of Mr. Dalesio, the parties may seek to schedule an in-person mediation session.

c. In the interim, the parties ask this Honorable Court to establish a briefing and hearing schedule.

d. The parties suggest that Defendants' briefs regarding the applicability of W. Va. Code §55-7b-9a be due no later than May 17, 2022.

e. Plaintiffs' responsive briefs be due no later than June 1, 2022.

f. Any replies be due no later than June 10, 2022.

g. A hearing be scheduled for the week of June 20, 2022.

6. This schedule allows the parties to explore the possibility of amicable resolution, but also assures the efficient administration of this matter.

7. Regarding the issue of remittitur, Plaintiffs have no objection to this Honorable Court's reduction of the \$1 million award of non-economic loss to comport with West Virginia's Medical Professional Liability Act in an amount of \$719,818.38.

8. Plaintiffs likewise have no objection to this Honorable Court's further remittitur of the jury's award by \$292,005.00.

**WHEREFORE** the parties jointly request that this Honorable Court take notice of the parties' attempt to amicably resolve this matter, but also set a briefing schedule in the interest of moving this matter toward final resolution.

Respectfully submitted,

PAULSON & NACE, PLLC

/s/ Christopher T. Nace  
Christopher T. Nace, Esq.  
W. Va. Bar No. 11464  
1025 Thomas Jefferson St., NW  
Suite 810  
Washington, DC 20007  
202-463-1999 – Telephone  
202-223-6824 – Facsimile  
[ctnace@paulsonandnace.com](mailto:ctnace@paulsonandnace.com)  
*Counsel for Plaintiffs*

and

/s/ D.C. Offutt  
D. C. Offutt, Jr., Esq.  
Offutt Nord Ashworth, PLLC  
949 Third Avenue  
Suite 300  
PO Box 2862  
Huntington, WV 25728  
Phone: (304) 529-2868  
Fax: (304) 529-2999  
Email Address: [dcoffutt@offuttnord.com](mailto:dcoffutt@offuttnord.com)  
*Counsel for Defendant Raleigh General Hospital*

and

/s/ Fred B. Westfall  
Fred B. Westfall, Jr., Esq.  
United States Department of Justice  
Robert C. Byrd United States Courthouse  
300 Virginia Street, East  
Suite 4000  
Charleston, WV 25301  
Phone: (304) 345-2200  
Fax: (304) 347-5443  
Email Address: [fred.westfall@usdoj.gov](mailto:fred.westfall@usdoj.gov)  
*Counsel for Defendant United States of America*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 20th day of April, 2022 I caused a true and exact copy of the foregoing to be served via CM/ECF upon:

C.J. Gideon, Jr., Esq.  
Bryan Essary, Esq.  
Gideon, Essary, Tardio & Carter PLC  
315 Deaderick Street  
Suite 1100  
Nashville, TN 37238  
Phone: (615) 254-0400  
Fax: (615) 254-0459  
Email Address: [cg@getclawfirm.com](mailto:cg@getclawfirm.com)  
Email Address: [bryan@getclawfirm.com](mailto:bryan@getclawfirm.com)  
*Counsel for Defendant Raleigh General Hospital*

D. C. Offutt, Jr., Esq.  
Offutt Nord Ashworth, PLLC  
949 Third Avenue  
Suite 300  
PO Box 2862  
Huntington, WV 25728  
Phone: (304) 529-2868  
Fax: (304) 529-2999  
Email Address: [dcoffutt@offuttnord.com](mailto:dcoffutt@offuttnord.com)  
*Counsel for Defendant Raleigh General Hospital*

Fred B. Westfall, Jr., Esq.  
United States Department of Justice  
Robert C. Byrd United States Courthouse  
300 Virginia Street, East  
Suite 4000  
Charleston, WV 25301  
Phone: (304) 345-2200  
Fax: (304) 347-5443  
Email Address: [fred.westfall@usdoj.gov](mailto:fred.westfall@usdoj.gov)  
*Counsel for Defendant United States of America*

/s/ Christopher T. Nace  
Christopher T. Nace, Esq.